From:	Flood, Rebecca (MPCA)
To:	Hyde, Tinka; Holst, Linda
Cc:	Lotthammer, Shannon (MPCA); Kessler, Katrina (MPCA)
Subject:	Minnesota river eutrophication standard
Date:	Tuesday, November 04, 2014 4:03:50 PM
Attachments:	20141104155504.pdf

Good afternoon Tinka and Linda. Please find attached our letter clarifying a part of the of the Minnesota river eutrophication standard. Should you have further questions, please let me know. Best regards, Rebecca.

Rebecca J. Flood
Assistant Commissioner
Minnesota Pollution Control Agency
651-757-2022
MPCA's mission is to protect and improve the environment and enhance human health.

Minnesota Pollution Control Agency

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November 5, 2014

Ms. Tinka Hyde
U.S. Environmental Protection Agency Region 5
77 West Jackson Boulevard
Mail Code: W-15J
Chicago, IL 60604-3507

Dear Ms. Hyde:

To assist the U.S. Environmental Protection Agency (EPA) in reviewing Minnesota's river eutrophication criteria, the Minnesota Pollution Control Agency (MPCA) is clarifying its interpretation of Paragraphs A and B of Subparts 2b, 3b, and 4b of the rule (pages 48, 62-63, and 79, respectively). The language in each of those subparts is identical. To make clear what we are referring to, we will use Subpart 4b as the template:

> "Subp. 4b. Narrative eutrophication standards for Class 2B rivers and streams.
>
> A. Eutrophication standards for rivers and streams are compared to summer-average data or as specified in subpart 4. Exceedance of the total phosphorus levels and chlorophyll-a (seston), five-day biochemical oxygen demand (BOD5), diel dissolved oxygen flux, or pH levels are required to indicate a polluted condition.
>
> B. Rivers and streams that exceed the phosphorus levels but do not exceed the chlorophyll-a (seston), five-day biochemical oxygen demand (BOD5), diel dissolved oxygen flux, or pH levels meet the eutrophication standard."

The MPCA interprets these subparts to mean that the eutrophication standard is met in streams/rivers where total phosphorus (TP) is exceeded and none of the response variables are exceeded; and not met in streams/rivers where TP is exceeded and any one or more of the response variables is exceeded. This interpretation is supported throughout the MPCA rulemaking record developed for the adoption of these standards. Most specifically it is supported on page 81-82 of Book 2 of the Statement of Need and Reasonableness. This interpretation is also consistent with the Minnesota Revisor of Statutes rules of construction for the use of "and" and "or" within a series of items.

We recognize that the expression of Paragraphs A and Part B do not specifically address situations where data for all response parameters are not available. Specifically, where TP is exceeded and there is no response variable exceeded, but not all response variables can be evaluated, we consider this to be insufficient information to determine attainment because there is the potential that a response variable could also be exceeded.

For assessment purposes (e.g., our Integrated Report), we intend to place any such waters on a "study list" and collect data on chlorophyll-a and other response variables such as continuous dissolved oxygen, biochemical oxygen demand, or pH to conclude assessment. The study list would be made publicly available on the MPCA website.

We appreciate your support of the MPCA as we work to develop and implement water quality standards to protect aquatic life and recreation around the state of Minnesota.

Sincerely,

Rebecca J. Flood
Assistant Commissioner

RJF/KK:ld